International Seabed Authority ISBA/18/FC/5

Finance Committee

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Status of fees paid for processing of applications for approval of plans of work for exploration and related matters

Report of the Secretary-General

1. In 2011 four applications for approval of plans of work for exploration were considered by the International Seabed Authority. These applications were made by Nauru Ocean Resources Inc. (NORI), Tonga Offshore Minerals Ltd. (TOML), China Ocean Mineral Resources Research and Development Association (COMRA) and the Russian Federation. Following consideration by the Legal and Technical Commission and the Council, each of the applications was approved. Subsequently, as required by the relevant regulations of the Authority, the plans of work were prepared in the form of contracts.

2. In accordance with the relevant regulations, each of the applicants paid a fee for the processing of the application for approval of the plan of work. In the case of NORI and TOML, a fixed fee of $250,000 was paid pursuant to regulation 19 of the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area. In the case of the Russian Federation, a fixed fee of $500,000 was paid pursuant to regulation 21 (1) (a) of the Regulations on Prospecting and Exploration for Polymetallic Sulphides in the Area. Pursuant to regulation 21 (1) (b) of the Sulphides Regulations, COMRA elected to pay a fixed fee of $50,000, followed by an annual fee calculated on the basis set out in regulation 21 (2).[1]

3. Regulation 19 (3) of the Nodules Regulations, which has a parallel in regulation 21 (5) of the Sulphides Regulations, provides that if the administrative costs incurred by the Authority in processing an application are less than the fixed amount, the Authority shall refund the difference to the applicant. Accordingly, the Secretary-General conducted an analysis of the costs incurred in processing each of the applications submitted in 2011. The analysis shows that, overall, the four applicants for approval of plans of work in 2011 paid a total of $1.05 million in

[1] Regulation 21 (2) provides for a variable fee depending upon the number of blocks retained for exploration. Advance relinquishment would diminish the number of blocks, and thus the fee payable. Assuming, however, that a contractor makes no advance relinquishment, the total amount paid over the life of a 15-year contract would be $800,000.

application fees, while the total expenditure attributable to processing of these applications is provisionally estimated at $1,477,882. The breakdown of expenditure is as shown in the table below. It should be noted that, because of the need to account separately to each contractor for the use of fees paid, the actual shortfall to the Authority is estimated at $546,561.

Breakdown of expenditure against fees paid by contractors in 2011

(United States dollars)

Contractor	*Fee paid*	*Processing costs*	*Excess (shortfall)*	*Refund due*
NORI	250 000	447 690	(197 690)	—
TOML	250 000	425 710	(175 710)	—
COMRA	50 000	223 161	(173 161)	—
Russian Federation[a]	500 000	381 321	118 679	118 679
Total	**1 050 000**	**1 477 882**	**(546 561)**	

[a] The amounts for the Russian Federation are provisional figures, as the contract had not been concluded at the time the present report was prepared.

I. Fees paid by Nauru Ocean Resources Inc. and Tonga Offshore Minerals Ltd.

4. Fees of $250,000 each were paid by NORI and TOML. Because these applications were considered over several years, the attributable expenditures amounted to $447,690 and $425,710, respectively. No refund is due and the contractors have been duly informed. There is nothing in the Nodules Regulations that would provide a basis for a supplementary fee to be levied on the contractors, but there is a general power for the Council to review the amount of the fee from time to time to ensure that it covers the administrative costs incurred by the Authority. Since the available evidence suggests that the current fee is not sufficient to cover the Authority's costs, it is suggested that the Council may wish to consider this matter in the context of the review of the Nodules Regulations that is already on the agenda of the Council for 2012.

II. Fees paid by China Ocean Mineral Resources Research and Development Association and the Russian Federation

5. The Sulphides Regulations (regulation 21) provide for a fixed fee of $500,000 or a variable annual fee payable over 15 years, with an initial fixed fee of $50,000. In the event that the Secretary-General notifies the Council that the fee has been insufficient to cover the administrative costs incurred by the Authority, the Council shall review the amount of the fee. However, this stipulation applies only to the fixed fee of $500,000, as specified in regulation 21 (1) (a), not to the variable fee, as stipulated in regulations 21 (1) (b) and 21 (2). As in the case of the Nodules Regulations, if the administrative costs are less than the fixed amount of fees, the Authority shall refund the difference to the applicant.

6. In 2011 the Russian Federation paid $500,000 and COMRA paid $50,000. Expenditure was $381,321 and $223,161, respectively. The amount in respect of the Russian Federation remains a provisional estimate, as the contract had not been concluded at the time the present report was prepared. In principle, however, once the contract has been signed, the Secretary-General will inform the contractor of any balance to be refunded.

III. Treatment of fees paid

7. Until such time as they have been fully accounted for, the fees paid by applicants are held in a special account with the Authority's bankers in accordance with financial regulation 5.6. The question that then arises is how the fees should be treated once they have been accounted for and any unused portion of the fees returned to the applicants.[2]

8. Under financial regulation 7.1, all income other than that specified in financial regulation 7.1 (a) through (i) shall be classed as miscellaneous income, for credit to the general administrative fund.

IV. Recommendation

9. The Finance Committee is invited to note the status of the fees paid by applicants for contracts in 2011 and the actions taken by the Secretary-General to account for the use of the fees.

10. The Finance Committee is also invited to recommend to the Council and the Assembly:

(a) That, in accordance with financial regulation 7.1, the balance of the fees paid by applicants for approval of plans of work in 2011, together with accrued interest thereon, shall be classed as miscellaneous income for the credit of the general administrative fund;

(b) To authorize the Secretary-General to apply such miscellaneous income to the extent necessary to meet any overexpenditure incurred in the financial period 2011-2012 as a result of processing plans of work for exploration.

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[2] Annex III, article 13, paragraph 2, of the United Nations Convention on the Law of the Sea provides that the amount of the fee shall be reviewed from time to time by the Council in order to ensure that it covers the administrative costs incurred by the Authority in processing the application. This is repeated in the Nodules Regulations (regulation 19 (2)). The Regulations also provide that if the administrative costs are less than the fixed amount, the Authority shall refund the difference to the applicant.